

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

March 7, 2005

CALL TO PODIUM:

Jacqueline Marsh

RESPONSIBLE STAFF:

Jacqueline Marsh, Associate Planner

Greg Ossont, Director of Planning and Code

AGENDA ITEM:

(please check one)

| | |
|---|------------------------------|
| | Presentation |
| | Proclamation/Certificate |
| | Appointment |
| | Public Hearing |
| | Historic District Commission |
| | Consent Item |
| | Ordinance |
| X | Resolution |
| | Policy Discussion |
| | Work Session Discussion Item |
| X | Other: Final Action |

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

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| Introduced | |
| Advertised | 10/22/2004 |
| | 10/27/2004 |
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| Hearing Date | 11/15/2004 |
| Record Held Open | 2/17/2005 |
| Policy Discussion | 2/22/2005 |

TITLE: Final Action

SDP-04-002 Requests an Amendment to Schematic Development Plan SDP-7-1, Market Square, Parcel A, Block WW, Building J to Convert 6,000 Square Feet of Retail Land Use to Restaurant Use and a 37 parking space waiver

SUPPORTING BACKGROUND:

At their February 22, 2005 meeting, the Mayor and City Council held a policy discussion on SDP-04-002. During the discussion, the Council discouraged the applicant from creating additional parking spaces by eliminating handicap spaces. The Council favored an increase for the requested parking waiver as alternative, modifying the number of spaces from thirty-three (33) to thirty-seven (37).

As a result of the policy discussion, staff has revised the conditions of approval for SDP-04-002 to reflect the increase in the parking waiver while maintaining all handicap spaces. Additionally, the language has been revised in condition #4 for further clarification.

Per the discussions from the policy discussion and the Planning Commission recommendation of approval, staff has drafted and attached a resolution approving the Schematic Development Plan SDP-04-002 including conditions of approval by the Planning Commission. The resolution has been reviewed by the City Attorney and is ready for adoption.

DESIRED OUTCOME:

ADOPT RESOLUTION APPROVING SDP-04-002.

RESOLUTION NO. _____

RESOLUTION OF THE MAYOR AND CITY COUNCIL
OF GAITHERSBURG GRANTING APPROVAL OF
SCHEMATIC DEVELOPMENT PLAN SDP-04-002 AS
AN AMENDMENT TO SCHEMATIC DEVELOPMENT PLAN SDP-7-1
FOR THE CONVERSION OF 6,000 SQUARE FEET OF RETAIL SPACE
TO RESTAURANT SPACE AND A 37- SPACE PARKING WAIVER,
LOCATED AT 653 CENTER POINT WAY, KENTLANDS MARKET SQUARE,
IN THE MIXED USE DEVELOPMENT (MXD), ZONE,
GAITHERSBURG, MARYLAND

SDP-04-002

OPINION

This proceeding constitutes an action pursuant to §24-160D of the Zoning Ordinance (Chapter 24 of the Gaithersburg City Code) which permits the Mayor and City Council to review and approve a schematic development plan in the MXD (Mixed Use Development) Zone; and further, §§24-160.D.10 and 24-160D.11. in which the Mayor and City Council can approve an amendment to a schematic development plan, consistent with the procedures for an amendment of the optional method for application for local map amendment plans as provided in §24-198(c) of the City Code.

The subject property, Parcel A, Block WW, is located at 653 Center Point Way, Gaithersburg, Maryland, in the MXD (Mixed Use Development) Zone.

Operative Facts

The subject property is a vacant 6,000 square foot retail commercial building, located at 653 Center Point Way, Parcel A, Block WW, in the Kentlands Market Square, and is bordered by Center Point Way to the north and Market Street East to the east.

A joint public hearing was held on schematic development plan SDP-04-002 on Monday, November 15, 2004, before the Mayor and City Council and City Planning Commission. This plan is an amendment to schematic development plan SDP-7-1 approved in July of 1997. The hearing had been advertised in the *Gaithersburg Gazette* on October 22 and 26, 2004, the required parties given notice, and the property posted per §24-196 of the City Code.

The Mayor and City Council and Planning Commission reviewed the amendment of the schematic development plan submitted by the applicant and the evidence in the record at the joint public hearing.

The applicant is proposing to occupy two separate restaurant businesses in the vacant building. The Star Diner Restaurant is adjacent to the subject property, across a paved pedestrian area located on the corner of Central Point Way and Market Street West. On the other side of the building is a movie theater. Directly to the west of the building is a concrete-pattern paved walkway that leads to the ice rink from Central Point Way.

The original amendment to the Schematic Development Plan, SDP-04-002, proposed a change in use at 653 Center Point Way, from 6,000 square feet of retail to restaurant, and an additional 6,500 square feet of restaurant space at 901 Center Point Way, Parcel A, Block TT, referred to as "Building K." At the joint public hearing, the applicant presented revised parking layouts for the Center with the additional restaurant uses.

The combined additional restaurant uses would exceed the restaurant use limit requirement for the Center, which is 15 percent. Rodgers Consulting, on behalf of the applicant, submitted two parking count studies for the Market Square area to support either a parking waiver request or parking table reconfiguration. The first study was conducted in April of 2004, on a Friday and Saturday night at hour intervals for eight hours total. These studies indicated surplus parking at peak periods in the southwest parking lot between the Michaels Arts and Crafts store and the Whole Foods building.

At the hearing, the Council and Commission expressed concerns over the applicant's parking studies and proposed parking calculations, and whether the Center could support additional restaurant uses when the lack of available parking was an issue. Following the public hearing, staff worked with the applicant to set parameters addressing the issues raised by the Council and the Commission, as well as the public.

A joint public work session of the Mayor and City Council and the Planning Commission was held on January 24, 2005. The applicant revised the request to include only the conversion of 6,000 square feet of retail to restaurant at 653 Center Point Way. In response to requests from staff, the applicant provided an updated parking study and a revised parking layout for the east and west parking lots of Market Square.

The applicant submitted a second parking study for the January 24, 2005, joint public work session. This study counted vacant parking spaces over four different days for twenty time intervals from December 17-21, 2004. This parking study supported the determination that the southwest parking lot was underutilized and a majority of the vehicles were parked in the east parking lot near the movie theatre. The parking studies showed that an average of 25-30 percent of the parking spaces remained vacant.

The applicant presented a revised parking layout for Market Square, showing an additional six new parking spaces by converting four handicap spaces and adding parking spaces at specific locations throughout the center. Using the new and converted parking spaces, there was a thirty-three space parking deficit, which would require a waiver at schematic development and site plan approval.

Prior to the closing of the Planning Commission's record on February 9, 2005, staff received additional exhibits, including testimony from Kentlands and Lakelands residents, in the form of letters and e-mails objecting to parking waivers for the center, the transcript for the joint public hearing, the staff analysis, and amended site plans and parking charts from the applicant's engineer.

The Planning Commission, at their regular meeting of February 16, 2005, reviewed the complete record and voted to recommend approval of SDP-04-002, as amended, to the City Council with seven conditions as stated in Planning Commission recommendation (Exhibit #44 of the record). The seventh condition was added by Commissioner Winborne, who stated that providing directional signage for the parking lots at Market Square would be beneficial for drivers seeking vacant parking.

Prior to the closing of the City Council's record on February 17, 2005, additional testimony was received from community residents voicing objections to the parking waiver and an additional restaurant at Market Square. One resident supported the proposal.

The Mayor and City Council discussed this matter in a public session in the form of a policy discussion on February 22, 2005, and agreed with the Planning Commission's recommendations of February 16, 2005, and the recommended conditions. After discussion of the proposed parking plan, the Council discouraged the elimination of handicap spaces for the center, and preferred an increase of the parking waiver instead. Therefore, the parking waiver shall be for thirty-seven (37) spaces.

The City Council directed staff to schedule final action for SDP-04-002 on March 7, 2005, and prepare a draft approval resolution with the seven conditions as more fully set forth in this opinion and resolution.

Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City Code) are among the provisions which define the nature of the City Council's review powers for amended schematic development plans in the MXD Zone.

Sec. 24-160D.9 Application and processing procedures.

The procedures governing the application for the MXD Zone and approvals necessary to seek building permits were followed per the listings in §24-160D.9(b).

Sec. 24-160D.10. Findings required.

* * * *

(b) The City Council may approve a schematic development plan only upon the finding that:

- (1) The plan is substantially in accord with approved sketch plan; and
- (2) The plan meets or accomplishes the purposes, objectives, and minimum standards and requirements for the zone; and
- (3) The plan is in accord with the area master plan and any accompanying special condition or requirement contained in said master plan for the area under consideration; and
- (4) The plan will be internally and externally compatible and harmonious with existing and planned land uses in the MXD zoned area and adjacent areas; and
- (5) That existing or planned public facilities are adequate to service the proposed development contained in the plan; and
- (6) That the development staging or phasing program is adequate in relation to provisions of public facilities and private amenities to service the proposed development; and
- (7) The plan, if approved, would be in the public interest.

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Sec. 24-160D.11. Procedures for amendment.

Amendments to a sketch plan or schematic development plan may be permitted, consistent with the procedures for amendment of optional method plans as provided in §24-198(c) of this Code.

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Sec. 24-198. Findings required.

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(c) The schematic development plan may be amended:

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(3) Subsequent to council action to approve as follows:

- a. Change in use involved. By either the filing of a new application or resubmission to the planning commission for further evaluation, public hearing and recommendation to the council. The council shall approve or disapprove the recommendation of the planning commission, without the necessity of a public hearing, no later than forty-five (45) days after receipt of the commission's recommendation or may, on its own motion, extend such time limit.

Findings

The City Council has reviewed the evidence of record in this case, and agrees with the findings and recommendations of the City staff and the City Planning Commission and accordingly finds:

1. The plan is substantially in accord with approved sketch plan and schematic development plan SDP-7-1. Because the building already exists and there is no additional square footage being added to the subject site, the footprint remains the same as shown in previously approved SDP-7-1. The parking utilizes the current existing spaces which were developed and constructed as part of SDP-7-1. Due to the change of use from retail to restaurant, the parking calculations and parking studies show a deficit of 37 spaces for which the applicant is requesting a waiver. Because the applicant has shown there is a moderate vacancy of parking spaces within a short walking distance of the proposed restaurant site, the waiver is justified.

2. The plan meets or accomplishes the purposes, objectives, and minimum standards and requirements of the MXD Zone as stated in §24-160.D.1. The plan is accordance with the purposes of the MXD Zone, which encourages multi-use development and will add to the existing integration of uses in Market Square. The incoming restaurant will provide more vitality to the center area with outdoor seating, and the new use and business will enhance the redevelopment to the ice rink area as a public space.

3. The plan remains in accord with the area master plan as approved in SDP-7-1 in 1997. The plan proposes a change in use, however, the building footprint will remain the same. Uses have been expanded from retail to restaurant which is in accord with the master plan recommendations for this area. Further, the applicant agrees to participate in the next phase of the City's Land Use Master Plan, as Market Square is a Special Study Area to be comprehensively studied during community based planning exercises. The applicant also acknowledges that no further density will be approved in Market Square until such time as the community based planning exercises have been completed.

4. The plan will be internally and externally compatible and harmonious with existing and planned land uses in the area. The existing building, when converted into restaurant use will promote community and social gathering in a harmonious manner. The applicant is to modify the architecture to the building in such a manner that will uniquely identify the building, which will keep in character with the Market Square Center. The buildings within the Center retain an individual character, which provide a more interesting element than traditional building facades.

5. The 6,000 square foot building, while vacant since its completion in 1998, is already served by the existing public facilities and no evidence has been presented to suggest the current service will be discontinued.

6. It would be in the public interest for this plan to be approved. The vacant building will now be utilized as a viable use and the proposed outdoor seating will create a sense of place that has always been synonymous with the goals and purposes of Market Square.

Conclusion

Upon consideration of all the evidence pertaining to Schematic Development Plan SDP-04-002, an amendment of SDP-7-1, the City Council concludes that the applicant has met the burden of proof that Schematic Development Plan SDP-04-002 meets the requirements of the MXD Zone, with the seven conditions as listed in the Resolution.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Gaithersburg, on March 7, 2005, that Schematic Development Plan SDP-04-002 is hereby approved subject to the following conditions:

1. At the time of site plan approval, the Planning Commission shall grant the applicant a thirty-seven (37) space parking waiver;
2. The applicant shall submit elevations for façade modifications and landscaping upgrades for the building at the time of final site plan;
3. The applicant shall submit a waste removal schedule to be approved at the time of final site plan;

4. The applicant shall participate in the Market Square Special Study Area process and community based planning exercise as part of the City's Master Plan update and acknowledges no additional approvals will be granted for Market Square until such time as the community based planning exercises have been completed;
5. Any future density build-out for Market Square shall require a Schematic Development Plan amendment and City approval;
6. The applicant shall continue negotiations with City staff to create a public/private partnership and enhance the ice rink area prior to the issuance of final occupancy; and
7. The applicant shall work with staff to provide a directional signage plan for the parking areas at the time of final site plan approval.

ADOPTED by the City Council of the City of Gaithersburg on the 7th day of March, 2005.

SIDNEY A. KATZ, MAYOR and
President of the Council

THIS IS TO CERTIFY that the foregoing
Resolution was adopted by the City of
Gaithersburg Mayor and City Council in a
Public meeting assembled on the 7th day
Of March, 2005.

David B. Humpton
City Manager